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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE943

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, Shark Research Fishery, and Chartering Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), shark research fishery permits, and chartering permits for Atlantic highly migratory species (HMS) in 2017. EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks (collectively known as HMS) from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection, bycatch research, public display, and to evaluate the efficacy of environmental clean-up efforts, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Chartering permits allow the owner of a U.S. fishing vessel to fish under a chartering arrangement, which is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS on the high seas or in the Exclusive Economic Zone of other nations. Generally, EFPs and related permits would be valid from the date of issuance

through December 31, 2017, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Email:* nmfs.hms.efp2017@noaa.gov. Include in the subject line the following identifier: 0648-XE943.
- *Mail:* Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary because HMS regulations (*e.g.*, fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activity. Pursuant to 50 CFR parts 600 and 635, a NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations (*e.g.*, fishing seasons, prohibited species,

authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Permit holders are not exempted from the regulations in entirety. Collection of HMS under EFPs, SRPs, LOAs, display, shark research fishery, and chartering permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted public display and educational activities with respect to Atlantic HMS. Before issuing LOAs, EFPs, or SRPs, NMFS requests, among other things, copies of scientific research plans. Because the Magnuson-Stevens Act states that scientific research activity which is conducted on a scientific research vessel is not fishing, NMFS issues LOAs and not EFPs for bona fide research activities (*e.g.*, scientific research being conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (*e.g.*, most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not

participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. NMFS acknowledges that the proposed activity meets the definition of scientific research under the Magnuson-Stevens Act and not ATCA by issuing an LOA to researchers. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is exempt under MSA, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs which authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (*e.g.*, tunas, swordfish, billfish, and some species of sharks). One example of research conducted under SRPs consists of scientific surveys of HMS conducted from NOAA research vessels.

EFPs are issued to researchers collecting ATCA and Magnuson-Stevens Act-managed species while conducting research from commercial or recreational fishing vessels. Examples of research conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; determining catch rates and gear characteristics of the swordfish buoy gear fishery and the green-stick tuna

fishery; and tagging sharks caught on commercial or recreational fishing gear to determining post-release mortality rates.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2017. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (*e.g.*, sand tiger sharks), and collection of fish below the regulatory minimum size. Under Amendment 2 to the 2006 Consolidated Atlantic HMS Fishery Management Plan, NMFS determined that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas and the impacts of the activities have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745.

In 2016, as in recent years, NMFS received several requests from researchers who were collaborating with the research group OCEARCH to conduct shark research. However, later in the year, NMFS also received an application from OCEARCH indicating its intent to conduct shark research in collaboration with a number of scientists.

Specifically, OCEARCH indicated its intent to coordinate all shark research it was involved in rather than require each individual scientist to apply for and receive their own EFP or SRP. In July 2016, NMFS issued an SRP to OCEARCH to tag and collect tissue samples from a variety of sharks in Federal waters, including white, tiger, great hammerhead, smooth hammerhead, bull, sand tiger, shortfin mako, longfin mako, oceanic whitetip, blue, silky, and Caribbean reef sharks. Among other research conducted under this permit, eight juvenile white sharks were tagged with satellite or “smart position only” tags off New York in August. Because the original permit provided authorization to tag only eight white sharks, and because there were still several more research trips planned, at the request of the research group, NMFS amended the permit to add an additional 25 white sharks in late August. In mid-September, OCEARCH moved to Federal waters off the coast of Massachusetts and began their tagging and collection activities. Earlier in 2016, because the Commonwealth of Massachusetts was in the process of conducting a mark-recapture study to assess the population and movement pattern of white sharks in their state waters, the Commonwealth of Massachusetts denied OCEARCH access to state waters. Once OCEARCH began conducting research in Federal waters just outside of Massachusetts state waters, the state and other organizations expressed concern regarding the potential impact of OCEARCH’s tagging activities on the mark-recapture study. If OCEARCH requests another group collaboration permit in 2017 or if individual researchers request the addition of OCEARCH on their permit in 2017, NMFS may issue a consolidated permit for all researchers utilizing this platform and would consider the concerns regarding the mark-recapture study, any concerns expressed during the comment period of this notice, and any other relevant information when deciding to issue

the permit and associated permit conditions. Note, however, that the recent final rule modifying archival tag permitting and reporting requirements (August 19, 2016, 81 FR 55376) may mean that an EFP or SRP may no longer be needed for OCEARCH tagging activities as archival tagging activities, which is a primary focus of OCEARCH research, no longer require written authorization from NMFS

In 2017, NMFS may once again receive an application for an EFP regarding purse seine fishing for Atlantic bluefin tuna. NMFS provided such an EFP to a purse seine vessel in 2014 and 2015 to study bycatch of large medium Atlantic bluefin tuna during otherwise authorized purse seine fishing operations. Specifically, the EFPs exempted the vessel owner from the retention limits on large medium BFT during otherwise authorized fishing operations. NMFS last issued a notice of intent regarding a potential purse seine EFP in 2014 (79 FR 63896, October 27, 2014), and did not receive any comments. NMFS issued the EFP for the 2015 fishing season on June 5, exempting the vessel from the size limit, with the following terms and conditions: 1) mandatory observer coverage on all trips, 2) all dead bluefin tuna at haul back must be available to observers for sampling, 3) sub-legal bluefin tuna that are released alive and in good condition will not be counted against the vessel's quota, 4) any sub-legal bluefin tuna that are dead at haulback may not be released by the vessel operator, and 5) only the observer has discretion over dead sub-legal fish that may be released without sampling.

Compared to the dead discards that occurred in 2013, while fishing under an EFP in 2014 and 2015, the overall reduction in dead discards was 69 and 64 percent, respectively. In 2016, NMFS received a similar application to the 2015 request but, as of preparation of this notice, NMFS had not issued a 2016 EFP because the vessel to be

used for the exempted fishing had not been issued a valid 2016 Atlantic Tunas permit in the Purse Seine category, and thus no otherwise authorized fishing could occur warranting a study of associated bycatch. NMFS may receive a similar request for an EFP in 2017 and requests comments, via this notice, on the continuation of such an EFP with similar terms and conditions should the permit holder have a properly permitted Purse Seine vessel. If such an application requests exemptions that are significantly different than those provided in the 2014 and 2015 permits, NMFS will provide additional opportunity for public comment.

NMFS is also requesting comments on chartering permits considered for issuance in 2017 to U.S. vessels fishing for HMS while operating under chartering arrangements with foreign countries. NMFS has not issued any chartering permits since 2004. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a chartering permit and must also have been issued all other appropriate permits. The vessel chartering regulations can be found at 50 CFR 635.5(a)(4) and 635.32(e).

In addition, Amendment 2 to the 2006 Consolidated HMS Fishery Management Plan (FMP) implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery

dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; and the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks. Fishermen who wish to participate must fill out an application for a shark research permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage. All non-prohibited shark species brought back to the vessel dead must be retained and will count against the appropriate quotas of the shark research fishery participant. During the 2016 shark research fishery, all participants were limited to a very small number of dusky shark mortalities on a regional basis. Once the number of mortalities occurs in a specific region all shark research fishery activities must stop within that region. Also, participants are limited to two sets per trip with, one set limited to 150 hooks and the second set limited to 300 hooks. All participants are also limited to a maximum of 500 hooks onboard the vessel with on a shark research fishery trip. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2017 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2017 during the comment period of this notice.

The authorized number of species for 2016, as well as the number of specimens collected in 2015, is summarized in Table 1. The number of specimens collected in 2016 will be available when all 2016 interim and annual reports are submitted to NMFS. In 2015, the number of specimens collected was less than the number of authorized specimens for all permit types, other than SRPs issued for shark research. The slightly higher numbers (21 sharks) are attributed to slightly more interactions with Atlantic sharpnose sharks on longline gear than anticipated. It is difficult to control the number and species of animals caught when using this gear type. These 21 sharks account for approximately 0.1 percent of the 57.2-mt ww quota available for the collection of most shark species under EFPs and related permits. Atlantic sharpnose sharks were determined to be not overfished and not experiencing overfishing in a 2013 stock assessment. Given the status of the species, the small number of Atlantic sharpnose sharks harvested above the authorized level, and the fact that the total number of sharks harvested across all permits is still less than the overall quota, this overharvest is not expected to have negative ecological impacts on the stock.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 36 EFPs, SRPs, display permits, and LOAs in 2015 for the collection of HMS and a total of 5 shark research fishery permits. As of October 4, 2016, NMFS has issued a total of 39 EFPs, SRPs, display permits, and LOAs and a total of 5 shark research fishery permits.

Table 1. Summary of HMS Exempted Fishing Permits Issued in 2015 and 2016, other than shark research fishery permits (“HMS” refers to multiple species being collected under a given permit type)

	2015					2016		
Permit Type	Permits Issued	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued	Authorized Fish (Num)	Authorized Larvae (Num)
EFP								
HMS	4	207	0	5	0	4	247	0
Shark	11	1,192	0	79	0	12	721	0
Tuna	3	928	0	0	0	4	530	0
Billfish	-	-	-	-	-	-	-	-
SRP								
HMS	1	480	0	57	0	1	42	0
Shark	4	875	0	896	0	5	1,165	0
Tuna	1	60	0	0	0	1	60	0
Display								
HMS	1	67	0	9	0	-	-	-
Shark	3	114	0	17	0	3	109	0
Total	28	3,923	0	1,063	0	30	2,874	0
LOA*								
Shark	8	2,205	0	1,776	0	9	2,906	0

*LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (*e.g.*, most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

Final decisions on the issuance of any EFPs, SRPs, display permits, shark research fishery permits, and chartering permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, the Environmental Assessment for the 2012 Swordfish Specifications, and the Environmental Assessment for the 2015 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2016

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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